

of whether the underlying liability is assumed by the controlled corporation. Treas. Reg. sec. 1.357-2(a). Similar rules apply to reorganizations described in section 368(a)(1)(D).

The gain recognition rule of section 357(c) is applied separately to each transferor in a section 351 exchange.

The basis of the property in the hands of the controlled corporation equals the transferor's basis in such property, increased by the amount of gain recognized by the transferor, including section 357(c) gain.

REASONS FOR CHANGE

The tax treatment under present law is unclear in situations involving the transfer of certain liabilities. As a result, the Committee is concerned that some taxpayers may be structuring transactions to take advantage of the uncertainty. For example, where more than one asset secures a single liability, some taxpayers might take the position that, on a transfer of the assets to different subsidiaries, each subsidiary counts the entire liability in determining the basis of the asset. This interpretation arguably might result in the duplication of tax basis or in assets having a tax basis in excess of their value, resulting in excessive depreciation deductions and mismeasurement of income. The provision is intended to eliminate the uncertainty, and to better reflect the underlying economics of these corporate transfers.

EXPLANATION OF PROVISION

Under the provision, the distinction between the assumption of a liability and the acquisition of an asset subject to a liability generally is eliminated. First, except as provided in Treasury regulations, a recourse liability (or any portion thereof) is treated as having been assumed if, as determined on the basis of all facts and circumstances, the transferee has agreed to, and is expected to satisfy the liability or portion thereof (whether or not the transferor has been relieved of the liability). Thus, where more than one person agrees to satisfy a liability or portion thereof, only one would be expected to satisfy such liability or portion thereof. Second, except as provided in Treasury regulations, a nonrecourse liability (or any portion thereof) is treated as having been assumed by the transferee of any asset that is subject to the liability. However, this amount is reduced in cases where an owner of other assets subject to the same nonrecourse liability agrees with the transferee to, and is expected to, satisfy the liability (up to the fair market value of the other assets, determined without regard to section 7701(g)).

In determining whether any person has agreed to and is expected to satisfy a liability, all facts and circumstances are to be considered. In any case where the transferee does agree to satisfy a liability, the transferee also will be expected to satisfy the liability in the absence of facts indicating the contrary.

In determining any increase to the basis of property transferred to the transferee as a result of gain recognized because of the assumption of liabilities under section 357, in no event will the increase cause the basis to exceed the fair market value of the property (determined without regard to sec. 7701(g)).

If gain is recognized to the transferor as the result of an assumption by a corporation of a nonrecourse liability that also is secured by any assets not transferred to the corporation, and if no person is subject to Federal income tax on such gain, then for purposes of

determining the basis of assets transferred, the amount of gain treated as recognized as the result of such assumption of liability shall be determined as if the liability assumed by the transferee equaled such transferee's ratable portion of the liability, based on the relative fair market values (determined without regard to sec. 7701(g)) of all assets subject to such nonrecourse liability. In no event will the gain cause the resulting basis to exceed the fair market value of the property (determined without regard to sec. 7701(g)).

The Treasury Department has authority to prescribe such regulations as may be necessary to carry out the purposes of the provision. This authority includes the authority to specify adjustments in the treatment of any subsequent transactions involving the liability, including the treatment of payments actually made with respect to any liability as well as appropriate basis and other adjustments with respect to such payments. Where appropriate, the Treasury Department also may prescribe regulations which provide that the manner in which a liability is treated as assumed under the provision is applied elsewhere in the Code.

EFFECTIVE DATE

The provision is effective for transfers on or after October 19, 1998. No inference regarding the tax treatment under present law is intended.

Mr. McNULTY. Mr. Speaker, I urge support of the bill, I have no further requests for time, and I yield back the balance of my time.

Mr. CRANE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois (Mr. CRANE) that the House suspend the rules and pass the bill, H.R. 435.

The question was taken.

Mr. McNULTY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

RECESS

The SPEAKER pro tempore (Mr. SHIMKUS). Pursuant to clause 12 of rule I, the Chair declares the House in recess until approximately 5 p.m.

Accordingly (at 3 o'clock and 20 minutes p.m.), the House stood in recess until approximately 5 p.m.

□ 1715

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. PEASE) at 5 o'clock and 15 minutes p.m.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair

will now put the question on each motion to suspend the rules on which further proceedings were postponed earlier today in the order in which that motion was entertained.

Votes will be taken in the following order:

H.R. 440, by the yeas and nays;

H.R. 439, by the yeas and nays;

H.R. 435, by the yeas and nays.

The Chair will reduce to 5 minutes the time for any electronic vote after the first such vote in this series.

MICROLOAN PROGRAM TECHNICAL CORRECTIONS ACT OF 1999

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 440, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Missouri (Mr. TALENT) that the House suspend the rules and pass the bill, H.R. 440, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 411, nays 4, not voting 18, as follows:

[Roll No. 12]

YEAS—411

Abercrombie	Callahan	Doolittle
Aderholt	Calvert	Doyle
Allen	Camp	Dreier
Andrews	Campbell	Duncan
Archer	Canady	Dunn
Armey	Cannon	Edwards
Bachus	Capps	Ehlers
Baird	Capuano	Ehrlich
Baker	Cardin	Emerson
Baldacci	Castle	Engel
Baldwin	Chabot	English
Ballenger	Chambliss	Eshoo
Barcia	Clay	Etheridge
Barr	Clayton	Evans
Barrett (NE)	Clement	Everett
Bartlett	Clyburn	Ewing
Barton	Coble	Farr
Bass	Coburn	Fattah
Bateman	Collins	Filner
Becerra	Combest	Fletcher
Bentsen	Condit	Foley
Bereuter	Conyers	Forbes
Berkley	Cook	Ford
Berman	Cooksey	Fossella
Berry	Costello	Fowler
Biggert	Cox	Frank (MA)
Bilbray	Coyne	Franks (NJ)
Bilirakis	Cramer	Frelinghuysen
Bishop	Crane	Frost
Blagojevich	Crowley	Gallegly
Bliley	Cubin	Ganske
Blumenauer	Cummings	Gedensson
Blunt	Cunningham	Gekas
Boehlert	Danner	Gibbons
Boehner	Davis (FL)	Gilchrest
Bonilla	Davis (IL)	Gillmor
Bonior	Davis (VA)	Gilman
Bono	Deal	Gonzalez
Borski	DeGette	Goode
Boswell	Delahunt	Goodlatte
Boucher	DeLauro	Goodling
Boyd	DeLay	Gordon
Brady (PA)	DeMint	Goss
Brady (TX)	Deutscher	Graham
Brown (CA)	Diaz-Balart	Green (TX)
Brown (FL)	Dickey	Green (WI)
Brown (OH)	Dicks	Greenwood
Bryant	Dingell	Gutierrez
Burr	Dixon	Gutknecht
Burton	Doggett	Hall (OH)
Buyer	Dooley	Hall (TX)